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# Before the LIBRARY OF CONGRESS UNITED STATES COPYRIGHT OFFICE Washington, D.C.

In the Matter of	)	
	)	
Digital Performance Right in	)	Docket No. 2001-1
Sound Recordings	)	CARP DSTRA 2
Rate Adjustment Proceedings	)	
	)	

# REPLY OF ROYALTY LOGIC INC. IN SUPPORT OF MOTION TO PERMIT LATE FILING OF NOTICE OF INTENT TO PARTICIPATE

Royalty Logic, Inc. ("RLI") respectfully submits this brief reply in response to the Joint Opposition to RLI's Motion to Permit Late Filing of Notice of Intent to Participate.

There is no reason that permitting RLI to participate, even at this stage, need cause disruption to the proceedings or to the proposed settlement.

First, there is no reason why RLI's participation should adversely affect the fundamental elements of the agreement, *i.e.*, the financial terms of the settlement reached by the parties. RLI stated specifically in its Motion and its Notice of Intent to Participate that it desired to address solely the designation of agents and regulations specifically applicable thereto. Thus, the only term of the settlement that explicitly would be affected by RLI's participation is the provision that identifies the Designated Agent.

Notwithstanding, the settlement fails to implement several "housekeeping" rules adopted in the regulations applicable to the eligible nonsubscription services. RLI

RLI wishes to note that the filing of its Motion on the same day as the filing of the proposed settlement was purely coincidental, and that RLI had not then, nor has it now, any intent to "disrupt" the proceedings or the proposed settlement.

respectfully submits that these provisions logically also should be included in any comprehensive regulations adopted by the Copyright Office for this proceeding as well (e.g., provisions requiring separate distribution treatment for non-RIAA/SoundExchange members, etc.).<sup>2</sup>

Second, the Joint Opposition cites no reason why the designation of RLI as a Designated Agent here, as was done with respect to the Eligible Nonsubscription Services, should cause the proposed settlement "to unravel." Indeed, it would be extremely illogical for the parties to abort their deal, and to incur the costs of a full bore CARP proceeding, over the appointment of a second Designated Agent. The Joint Opposition parties (including the copyright owner and performer members of RIAA/SoundExchange) would have substantial motivation to keep the deal intact so as to avoid having those costs deducted from their royalty payments. Conversely, the services themselves generally should not care who distributes the money, so long as the amount of the payments is not otherwise affected. Therefore, RLI submits that the parties will be better served by permitting RLI to participate, in hopes of reaching a truly comprehensive settlement that avoids a CARP.

Third, the Copyright Office also should consider the interests of those whom RLI represents as Designated Agent or may hereafter represent during the term of the proposed settlement (through 2007). Their interests with respect to payment terms and conditions otherwise would not be represented in this proceeding by those who filed the Joint Opposition. It is in their interest that their chosen designated agent be able to function across all statutory licenses and carve their share of royalties (without deduction

RLI has circulated to RIAA and the services for their consideration a proposed set of such regulations, in hopes of voluntarily settling this matter.

of RIAA/SoundExchange CARP costs) out of total licensing receipts. It is also in their interest that their chosen designated agent obtain additional income from the administration of the statutory license fees to help amortize fixed costs across all proceedings, and to help ensure that RLI become sufficiently sound financially so as to continue to efficiently represent their interests in the future. RLI respectfully submits that the interests of RLI's clients would better be served by having their funds distributed directly to them from a single source that charges a low administrative fee, that makes direct payments to the performing artists, and that does not render them subject to the recoupment of RIAA/SoundExchange's historical CARP costs from out of the royalty pool.

In this regard, RLI submits that the Copyright Office should take into account the intent of Congress in enacting the Small Webcaster Settlement Act of 2002. Specifically, Section 5(b) of that Act, now codified at 17 U.S.C. § 114(g)(3), ensured that SoundExchange would not be permitted to deduct RIAA's CARP participation costs and legal fees from royalties that otherwise would be due and payable to copyright owners and artists represented by RLI as Designated Agent. RLI's participation in this CARP will promote Congress' objective of protecting those who, pursuant to their rights under the Small Webcaster Settlement Act, have chosen to affiliate with RLI for reasons including the intention not to be subject to recoupment of RIAA/SoundExchange's historical CARP costs and other expenses.

Fourth, regardless of the settlement of these three parties, RLI believes that the Motion should be granted so that RLI can participate in any proceedings (including any negotiations) with respect to the two other preexisting satellite services in this

consolidated proceeding. Thus, the settlement should in no way affect RLI's right to proceed with respect to those parties as well.

Fifth, we note again that RLI had good cause for delay in this matter. Until July 2002, the concept of a "designated agent" did not exist, and no need for any designated agent to participate in any CARP. Nor was it clear that the regulations granted such an agent the ability to participate in a CARP. RLI is aware of no precedent for any agent to participate in a rate setting CARP proceeding solely with respect to the terms and conditions governing distribution of the funds. To our knowledge, neither

SoundExchange nor AARC participated in any CARP except vicariously through organizations that represented its board members. To the contrary, the rules had appeared to specifically contemplate that parties could participate only if they put forward a rate request. See 37 C.F.R. § 251.43(d) (2002). Given the reasons why RLI rationally would not have sought to join this CARP until its status as designated agent was clear, and the uncertainty surrounding RLI's ability to participate, RLI's delay in filling its Motion was entirely reasonable and excusable.

Finally, we note that the Copyright Office has published the proposed settlement and the accompanying regulations for comment. The Notice states that RLI can submit comments as an interested party that would be affected by the outcome of the proceedings and would be ready to participate in a CARP in this matter. We respectfully submit that it makes more sense to attempt to reach a comprehensive settlement in the current proceeding sooner rather than later. Therefore, it makes better sense to grant RLI's motion and permit immediate negotiation among those parties who have voiced their current interest in the instant proceeding.

Wherefore, and for such other reasons as the Copyright Office may deem just and proper, RLI respectfully requests that its Motion to Permit Late Filing be granted.

Respectfully submitted,

Date: February 10, 2003

Seth D. Greenstein

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#### **Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Reply of Royalty Logic Inc. in Support of Motion to Permit Late Filing of Notice of Intent to Participate, Inc., was sent on February 10, 2003 by facsimile to the following counsel of record:

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GENERAL COUNSEL OF COPYRIGHT

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